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**Ben C. Adams, Jr.**

Chairman and Chief Executive Officer  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103  
Direct: 901.577.2307  
Fax: 901. 577.0714  
E-mail: [badams@bakerdonelson.com](mailto:badams@bakerdonelson.com)  
[www.bakerdonelson.com](http://www.bakerdonelson.com)

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Friday, December 8, 2017 [Search the TBA Site for Opinions and News Items](#)

## Juvenile Task Force Reports Findings, Recommendations

A special task force on juvenile justice today presented state leaders with a set of data-driven policy recommendations. The Joint Ad-hoc Blue Ribbon task force – composed of leaders

## Today's News

[Legal News](#)  
[BPR Actions](#)  
[TBA CLE](#)  
[Election 2018](#)

from the executive, legislative and judicial branches – made recommendations that focused on 1) how to focus resources on the highest-risk youth; 2) how to prevent deeper juvenile justice system involvement of lower-level youth through early response; and 3) how to sustain effective practices through continued oversight and reinvestment in a stronger continuum of evidence-based services. [Read more details on the recommendations](#) from the Tennessee Courts website.

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## Today's Opinions

Click on the category of your choice to view summaries of today's opinions from that court, or other body. A link at the end of each case summary will let you download the full opinion in PDF format.

00 - TN Supreme Court  
00 - TN Workers Comp Appeals  
[01 - TN Workers Comp Appeals Board](#)  
00 - TN Supreme Court - Rules  
[01 - TN Court of Appeals](#)  
[02 - TN Court of Criminal Appeals](#)  
00 - TN Attorney General Opinions  
00 - Judicial Ethics Opinions  
00 - Formal Ethics Opinions - BPR  
00 - TN Supreme Court - Disciplinary Orders

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## TN Workers Comp Appeals Board

### ROXANNA MARIE HAZY KELSO v. FIVE STAR FOOD SERVICE, ET AL.

Court: TN Workers Comp Appeals Board

Attorneys:

Roxanna Marie Hazy Kelso, Charleston, Tennessee,  
employee-appellant, pro se.

## Legal News

### Nashville Council Accepting Nominations for General Sessions Appointment

With Judge Angelita Blackshear Dalton's succession to the Davidson County Criminal Court, [Nashville's Metro Council is filling the vacancy](#) created on the General Sessions bench until the next general election, the Nashville Bar Association reports. Nominations may be made in writing and filed with the Metropolitan Clerk not later than 4 p.m. on Tuesday. Nominations should include the nominee's complete contact information. An election to fill the vacancy will be conducted at the Jan. 2 Metro Council meeting.

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### Pilot Flying J Trial: Former President on Tape Making 'Inflammatory Racial Epithets'

As a part of an investigation into the Pilot Flying J fraud scandal, former president Mark Hazelwood was captured on tape making what a judge called "vile, despicable, inflammatory racial" comments, [Knoxnews reports](#). U.S. District Judge Curtis Collier said that if the tapes had been made public while Hazelwood was still president, black employees who had been fired would have cause to sue. Collier said he will allow the

Gordon C. Aulgur, Lansing, Michigan, for the employer-appellee, Five Star Food Service.

Judge: DAVIDSON

The employee alleges that her bilateral upper extremity complaints, including carpal tunnel syndrome, stem from her employment as a cafeteria worker. The employer denied the claim on the basis that the statute of limitations had expired. After an expedited hearing, the trial court found the employee had filed her claim within the statute of limitations and ordered the employer to provide a panel of physicians. The employer appealed and we affirmed. Thereafter, the panel physician selected by the employee opined that the employee's complaints were not related to her employment. The employer filed a motion for summary judgment, which the trial court granted. The employee has appealed the trial court's dismissal of the case. We affirm the trial court's decision and certify the court's order as final.

[kelsor\\_120817.pdf](#)

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## TN Court of Appeals

### **METROPOLITAN DEVELOPMENT AND HOUSING AGENCY v. NASHVILLE DOWNTOWN PLATINUM, LLC**

Court: TN Court of Appeals

Attorneys:

Timothy L. Warnock and Timothy Harvey, Nashville, Tennessee, and Rita M. Aliss Powers, James D. Masterman and Gregory E. Ostfeld, Chicago, Illinois for the appellant, Nashville Downtown Platinum, LLC.

G. Brian Jackson, David L. Johnson and Renard A. Hirsch, Sr., Nashville, Tennessee, for the appellee, Metropolitan Development and Housing Agency.

Judge: GOLDIN

In this condemnation case, a jury trial was held concerning the amount of compensation owed to Appellant as a result of the governmental taking of its property. The jury returned a verdict finding that the fair market value of the property had been over \$2,000,000.00 on the date of the taking, and the trial court entered judgment on the verdict. Although Appellant now appeals raising several issues, we affirm the trial court's

recordings to be heard by the jury in the case against Hazelwood and three other former employees.

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### **ABA Ethics Opinion: Judges Using Internet to Search for Facts Poses Ethical Problems**

A new American Bar Association ethics opinion finds that while judges may conduct legal research online for cases not cited by the parties, using the internet to find facts concerning the parties or subject matter of a case poses ethical problems, [the ABA Journal reports](#).

Finding "adjudicative facts" about a case is already generally banned by the ABA Model Code of Judicial Conduct, but an exception allows judges to go online for facts that are subject to judicial notice because they are generally known and not subject to reasonable dispute. The opinion also offers guidelines for judges to conduct independent factual research.

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### **Erin Palmer Polly Elected 2018 NBA President**

Erin Palmer Polly, a commercial litigation attorney at Butler Snow LLP, was [elected president of the Nashville Bar Association](#) at its December board of directors meeting. Polly previously served as the NBA's YLD president in 2014, and has been a recipient of the Legal Aid Society Volunteer Lawyer's Program Pro Bono Award.

judgment.

[metrodevandhousingagency\\_120817.pdf](#)

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## TN Court of Criminal Appeals

### STATE OF TENNESSEE v. DANIEL NESBIT

Court: TN Court of Criminal Appeals

Attorneys:

Gregory D. Allen (on appeal), and Paul J. Springer (at trial),  
Memphis, Tennessee, for the appellant, Daniel Nesbit.

Herbert H. Slatery III, Attorney General and Reporter; Jeffrey  
D. Zentner, Assistant Attorney General; Amy P. Weirich,  
District Attorney General; and Glenn Baity and Bryce Phillips,  
Assistant District Attorneys General, for the appellee, State of  
Tennessee.

Judge: WOODALL

Defendant, Daniel Nesbit, was indicted for felony murder and attempted especially aggravated robbery for his role in the shooting death of the victim, Jernario Taylor. After a jury trial, Defendant was convicted as charged and sentenced to an effective sentence of life imprisonment. Defendant appeals, arguing that: (1) the trial court erred in granting the State a continuance over the objection of defense counsel; (2) the State failed to disclose exculpatory evidence; (3) the trial court erred by admitting a recording of a telephone call between the co-defendant and his girlfriend; (4) the trial court erred by failing to grant a mistrial; (5) the trial court erred by allowing the State to argue inconsistent theories; (6) the trial court erred by admitting evidence of Defendant's arrest in Alabama; (7) the evidence was insufficient to support the convictions; (8) the trial court erred by failing to disclose a note received from the jury during deliberations; and (9) cumulative error necessitates a reversal of Defendant's convictions. Having carefully reviewed the record before us and the briefs of the parties, we find no error and affirm the judgments of the trial court.

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### STATE OF TENNESSEE v. STEPHANO LEE WEILACKER

Court: TN Court of Criminal Appeals

Laura Smith was elected president-elect, Jackie Dixon was named first vice president-elect, Wendy Longmire was elected second vice president-elect, Mary Taylor Gallagher was elected secretary and Jeff Gibson named treasurer. Tera Rica Murdock was elected president of the NBA YLD, and Lela Hollabaugh was named general counsel.

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### Federal Judge Rules Jeremy Durham Can't Recoup Lifetime Benefits

Former state House Rep. Jeremy Durham saw his effort to recoup the lifetime benefits he lost in his expulsion from the legislature dismissed today by a federal judge, [The Tennessean reports](#). U.S. District Judge Aleta Trauger ruled that Durham's lawsuit, filed against the state finance commissioner, legislature administrator and state treasurer, was pointed in the wrong direction. The defendants took no part in the expulsion, Trauger ruled. "Suing the named defendants in this case amounts to an attempt to make an end-run around a challenge to the expulsion itself," she said.

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### Prosecutors Say Bookkeeper for Christian Group Stole \$394K

The bookkeeper for Titus International, a Christian organization based in Chattanooga, stole \$394,000 from the group,

Attorneys:

Richard C. Strong, Nashville, Tennessee, for the appellant, Stephano Lee Weilacker.

Herbert H. Slatery III, Attorney General and Reporter; Clark B. Thornton, Senior Counsel; John Wesley Carney, Jr., District Attorney General; and Robert Nash, Assistant District Attorney General, for the appellee, State of Tennessee.

Judge: WOODALL

Defendant, Stephano Lee Weilacker, was found guilty by a Montgomery County jury of especially aggravated kidnapping and aggravated robbery. He received an effective twenty-year sentence to be served consecutively to a previous sentence. In this, Defendant's third direct appeal, he argues: that the evidence was insufficient; that the trial court permitted a reversible constructive amendment to the indictment; that the trial court erred by failing to instruct the jury as provided by White; that the trial court erred by denying his motion to suppress evidence found in his vehicle; that the State committed prosecutorial misconduct during closing arguments, and that consecutive sentencing was improper. We find that all of Defendant's issues, except for the issues concerning the amendment to the indictment and the jury instruction, have been previously addressed by this court in Defendant's two prior appeals and cannot be reconsidered. We find that the issue concerning the indictment is waived and that the trial court was not required to instruct the jury in accordance with White. Therefore, Defendant's convictions are affirmed.

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[Chattanooga.com reports.](#)

Gwen Lively has agreed to plead guilty to bank fraud and aggravated identity theft. She had been with Titus since 2010, and federal prosecutors accused her of beginning the scheme shortly after she joined. She used two methods to defraud the group: transferring funds from the Titus account into one controlled by her, and using pre-signed checks with the director's name to make them payable to herself.

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### **Officers Charged with Abusing Background Check System**

Two Franklin Police officers have been arrested on charges of using the background check system unrelated to police investigations, [the Associated Press reports](#). A Williamson County grand jury indicted former officers Britton Douglas Cornell and Ryan Wayne Dugger this week on one count each of official misconduct and official misuse of information. The Tennessee Bureau of Investigation said the pair used the Criminal Justice Portal System for excessive inquiries on days off and after hours.

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### **Senate Judiciary Advances 10 Nominees, Including Grasz**

The U.S. Senate Judiciary Committee has advanced 10 judicial nominees, including controversial

figure Leonard Steven Grasz, who received a “not qualified” rating from the American Bar Association, [the ABA Journal reports](#). Grasz was found to have a “passionately held social agenda” by an ABA committee, which believed Grasz would be unable to respect precedent in the 8th U.S. Circuit Court of Appeals in St. Louis. The Judiciary Committee approved the nominees via an 11-9 party line vote.

## **BPR Actions**

### **Davidson County Lawyer Placed on Disability Inactive Status**

The law license of [Anthony Adgent](#) was transferred to disability inactive status on Thursday, pursuant to Section 27.3 of Tennessee Supreme Court Rule 9. Adgent cannot practice law while on disability inactive status. He may return to the practice of law after reinstatement by the Tennessee Supreme Court upon showing clear and convincing evidence that the disability has been removed, and he is fit to resume the practice of law.

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## **TBA CLE**

### **Chattanooga Ethics Roadshow on Dec. 14**

Use the pre-paid credits that



come with your TBA Complete Membership and register free for [TBA's Ethics Roadshow](#). The program will be held in Chattanooga on Dec. 14 and offer three hours of dual/ethics CLE. This year's program will focus on the 13 reasons why ethics issues are more complicated than ever. Also watch for Ethics Roadshow stops in [Knoxville, Jackson and Johnson City](#).

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## Election 2018

### **Sheila Butt to Retire from State House**

Tennessee state House Rep. Sheila Butt, R-Columbia, announced this week that she will not run for reelection in 2018, [The Columbia Daily Herald reports](#). Butt was first elected to the seat in 2010. She said that after her term is complete next year, she will devote her time to her ministry, called "Sisters, Servants and Soldiers." Butt's District 64 [encompasses most of Maury County](#), but excludes downtown Columbia and a sliver of the western portion of the county.

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Questions, comments: Email us at [TBA Today@tnbar.org](mailto:TBA Today@tnbar.org)

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